

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1353 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DASRATHBHAI SOMABHAI VASAVA

Versus

FATESINH CHHITABAVA PARMAR

Appearance:

MR HASHIM QURESHI for Petitioner

MR PN BAVISHI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 26/03/98

ORAL JUDGEMENT

1. Heard the Ld.Advocate--Mr.Hashim Qureshi appearing for petitioner. Rule. Ld.APP-Mr.A.J.Desai waives service of rule on behalf of respondent No.4. Mr.P.N.Bhavishi appears and waives service of rule on behalf of respondent Nos 1 to 3. By consent of learned advocates appearing for parties matter is finally heard today.

2. The petitioner has challenged the legality and propriety of the order passed by the Ld.Addl.Sessions Judge, Broach, dated 21.5.97 in the matter of Cri.Revn.Appln.No.94/96.

3. That vide impugned order the Ld.Addl.Sessions Judge has set aside the order passed by Ld.JMFC, Ankleswar in the matter of Enquiry No.6/95 dated 22.7.96 and has directed the said court to forward the record of the said case papers to the Sessions Court for trial or to return the papers to the complainant for production in the court of Sessions for trial according to law.

4. The present petitioner has lodged a complaint before the Ld.JMFC at Ankleswar on 16.1.1995 against respondent Nos 1,2 and 3 under sections 323, 506(2) and 504 of IPC and also under section 3(1) (10) of Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1987 (hereinafter referred to as "the Act"). That the Ld.JMFC, Ankleswar passed an order dated 22.7.96 to register a complaint and issue summons against the accused (respondent Nos 1, 2 & 3) for the offences under sections 323, 506(2),504 and 114 of IPC and under section 3(1)(10) of the Act. The Ld.JMFC also stated in the order that the respondent No.2 not being a Scheduled Caste or Scheduled Tribe member is excluded from the offences covered under the Act.

5. That the present respondents being aggrieved and dissatisfied by the said order of the Ld.JMFC dated 22.7.96 preferred Criminal Revn.Appln.No.94/96 in the court of Ld.Addl.Sessions Judge, Broach and as stated hereinabove the Ld.Addl.Sessions Judge, Broach decided the said revision application vide the impugned order.

6. Mr.Qureshi, Ld.advocate appearing on behalf of the petitioner has made two submissions. Firstly, it is submitted that the earlier order passed by the Ld.JMFC, Ankleswar to issue summons against present respondents being an order in the nature of interlocutory order no revision could be maintained under section 397(2) of Cr.P.C. and thereby the impugned order is null, void, illegal and bad in law. It is further submitted that in the absence of any specific provisions in the Act creating bar for application of provisions of Criminal Procedure Code the pre-trial proceedings pursuant to a complaint could be conducted by the court of Ld.JMFC under section 4(2) Cr.P.C. In order to support the submissions Mr.Qureshi referred to and relied on the observatiosn made by this court in the matter of State of

Gujarat vs Madiya Nitin M reported vide 1996(2) GLH 30. Mr.Qureshi also referred to and relied on the observatiosn made by the Supreme Court in the case of Directorate of Enforcement vs Deepak Mahajan reported in AIR 1994 SC 1775.

7. I have carefully gone through the impugned order and the authorities cited at the Bar and in my opinion none of the authorities referred to and relied on behalf of the petitioner has application to the point in dispute. That the submissions made on behalf of the petitioner can not be accepted for more than one reason.

8. It may be noted that the provision of Section 14 of the Act on true construction be appreciated in the context of other provisions of the Act. The Act provides a special code for investigation and trial of offences created under the Act and thereby section 14 impliedly bar the jurisdiction of the court established under the Cr.P.C to take cognizance of an offence specially prescribed under the Act. It is also note worthy that the State of Gujarat in consultation with the High Court of Gujarat has issued necessary direction and in every sessions division sessions court is empowered as special court to function as prescribed under section 14 of the Act. In view of the same the cognizance of the complaint for the offence made punishable under the Act could be taken by sessions court only and not by ordinary court under section 4(2) of Cr.P.C. That the Ld.Addl.Sessions Judge at Broach has rightly followed the settled preposition and thereby has set aside the order passed by the Ld.JMFC at Ankleswar and directed the Ld.JMFC to forward the papers to sessions court as competent court under the Act.

9. On the basis of above stated discussion as I do not find any infirmity or illegality in the impugned order passed by the Ld.Addl.Sessions Judge, Broach present special criminal application fails and stands disposed of as rejected. Rule is discharged. No costs.

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